IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

Chapter VIII, Rule 32(2)(b)

Description of Case

F.A. No. 912 of 2001
(Old No. 362 of 1996)

Date of decision:- 28-7-2006

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

Date:- 28-7-2006 Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

First Appeal No. 912 of 2001
(Old No. 362 of 1996)

Prem Singh son of Sri Narain Singh, resident of village Gyanshu, Patti Barahat, Tehsil Bhatwari, district Uttarkashi.
…. Defendant/Appellant.

Versus

1. Dharam Singh.
2. Vijendra Singh.
3. Bachan Singh.
4. Madan Singh.
   All Sons of late Sri Amar Singh, R/o villaged Gyanshu, Patti Barahat, tehsil Bhatwri, district Uttarkashi.
   …..… Plaintiffs/respondents.

Sri Rajendra Dobhal, learned counsel for the appellant.
Sri N.S.Negi, learned counsel for the respondents.

28.07.2006.

Hon'ble J.C.S. RAWAT, J.

1. This appeal has been filed by the appellant/defendant against the judgment and order dated 13.8.1996 passed by the then District Judge, Uttarkashi whereby he decreed the suit no. 9 of 1992 Dharam Singh and others Vs Prem Singh for permanent injunction.

2. Brief facts for the disposal of this appeal are that the plaintiffs' father acquired Sirdari rights over the plots Nos.641, 719 and 720 measuring 6 Nali 3 Muthis and was in peaceful possession thereof till his death and after his death the plaintiffs being the only heirs were recorded as bhumidhar in the revenue records. On 27.11.1991 the defendant damaged the crop sown by the plaintiffs and the defendant intended to take possession over plot No.719, hence the necessity arose for filing the suit. The defendant contested the suit and filed his written statement denying all

The allegations made in the plaint. It is alleged by the defendant that the old corresponding number of plot No.641,719 and 657 was plot No. 366,335,336 and 364 which were recorded in the name of Smt. Tulsa Devi. Smt. Tulsa Devi died issueless before the present settlement and the property vested in the State Government. The State Government needed the property in village Barahat for construction of PWD Inspection House and other government quarters, so the government acquired the property without paying any compensation and the owners were given plots of Tulsa Devi in exchange. The grand father of defendant, namely Mor Singh was 'Maurusidar' of plot No. 611. The said plot was acquired by the State. The State instead of paying compensation, gave plot No. 719 in exchange to the grand father of the defendant. The grand father remained in possession over the said plot during his life time. After the death of the grand father for the defendant the said plot came into the share of Narain Singh, father of the defendant. The defendant became bhumidhar of plot No. 719. The defendant denied that the plaintiffs became Asami of plot No. 719 and thereafter Sirdar and thereafter bhumidhar. It was alleged by the defendant that the entries in revenue records are forged, hence the defendant prayed for dismissal of the suit.

3. The Court below framed the necessary issues in the case.

4. On appraisal of the entire evidence on record, the learned trial court decreed the suit of the plaintiffs for permanent injunction. Feeling aggrieved by the order of the trial court, the present first appeal has been preferred by the appellant/defendant before this Court.

5. I have heard learned counsel for the parties and perused the entire material on record.

6. The respondents/plaintiffs had alleged tat their father acquired sirdari rights by virtue of a notification dated 19.12.1973. It was further alleged that the disputed plot No.719 was in possession of the plaintiffs' father since 1974. After his death the plaintiffs being the sole heirs were recorded as bhumidhars in the revenue records. The plaintiffs had cultivated the said field No. 719 area 2 nali 11 mutthis. The appellant/defendant interfered in their possession so the suit was filed. The defendant had taken a case that the field No. 719 corresponds to the old No.336 and 335 in the old settlement and were recorded in the name of Smt. Tulsa Devi who died issueless before the settlement conducted in the year 1952 to 1963. The said disputed property reverted back to the state Government as she had left no heir. The defendant has further taken a case that the plaintiffs were never in possession over the disputed land and he never became the Aasami by virtue of the enforcement of U.P. Z.A. & L.R.Act in Uttaranchal and thereafter he never became Sirdars under he provisions of K.U.Z.A. Act. It was further alleged that eh appellant/defendant had a land in village Barahat which was taken by the Government for the construction of a PWD House and some quarters thereupon. But the government department instead of paying the compensation to the land holders of he said plots were given the plots of Smt. Tulsa Devi in exchange situated in village Barahat. The grand father of the appellant/defendant became the tenure holder of field No.719 and he remained in possession throughout his life. After the death of his grand father the defendant came into possession of the disputed land. It was also alleged by the defendant that the plaintiffs were never in possession of the disputed field. The District

Magistrate vide its order dated 17.4.1956 ordered that the property of Smt. Tulsa Devi be got released from the possession of Amar Singh but allowed Amar Singh, the father of the plaintiffs, to remain in possession over that very land on which there was his house, Gaushala and other construction measuring 4 Nali 1 mutthi land.

7. Thus, the question arises for the determination as to whether the respondents/plaintiff had acquired a right by virtue of Section 10(e) of the Kumaon & Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (in short called the Act) a Assami or not or whether the plaintiffs were in possession over he disputed plot since long and the possession was not disturbed during the said period.

8. Section 10 of the Act provides as under:

"Every person who on the date immediately receding the appointed date was –

(a) ……..

(b) ……

(c) ……..

(d) ……

(e) Recorded as occupant of land held by a hissedar or a khaikar as such in the last revision of records made under Chapter IV of the U. P. Land Revenue Act, 1901, shall be called Asami of the land and shall, subject to the provisions of this Act, be entitled to take or retain possession thereof."

(f) ……..

9. To attract the provisions of section 10 for the Act, to become an Asami and on the date immediately preceding the appointed date, he must be recorded as occupant of the land held by a Hissedar or Khaikar, as such in the last revision of records made under Chapter IV of the U.P. Land Revenue Act, 1901. The provision reveals that his name must

be recorded as an occupant in the relevant revenue documents.

10. Now we have to see whether his name was recorded in accordance with Section 10(e) of the Act in the revenue record or not. In the khatauni of the settlement the name of Amar Singh had been recorded as an occupant but by virtue of an order of the A.R.O. passed on 6.5.1961 the entry in the remarks column by the red ink had been made that the name of Amar Singh may be deleted and the name of Smt. TulsA wife of Badri may be recorded in the relevant document. Thus, this entry clearly reveals that the name of Amar Singh was deleted from the khatauni which was prepared during the settlement period and under chapter IV of U.P. Revenue Act.

11. It is pertinent to mention here that when the final settlements are conducted of the revenue records, the A.R.O. gets prepared the documents and a fard with regard to the tenure holders and their possession over the land and he obtains the reports from the Amin as well as from the Patari, as well as from the Naib Tehsildar and other revenue officials. After the receipt of the reports, the settlement official prepares a document in which the names of the land tenure holders and sub tenant, occupants and trespassers are recorded in the said document. The said document is published and thereafter the objections are invited and thereafter the A.R.O. passes an order and it is again published and if any party files an objection he corrects the order. In this case the document which has been filed before the Court below reveals that these documents pertain to the documents of the same process. Certain documents reveal the possession of Amar Singh and thereafter the A.R.O. had prepared the proposed draft Tanaza in which it was stated

that the father of the appellant was in possession on the basis of the orders of the different revenue authorities filed in this behalf. Thereafter it is revealed that the Patwari and the other revenue officials submitted a report which is paper No.23Ga/2 dated 6.2.1961 in which it has been indicated that the name of Amar Singh had been recorded surreptitiously by the Record Operation officials. He had further written in that report that the said land had already been handed over to the Malguzar as it being the land of the Government. This report was submitted by the Naib Tehsildar on 6.2.1961 to the A.R.O. and he had specifically mentioned the name of the father of the plaintiffs Amar Singh that in field No.719 his name and the entries of his possession were wrong and recorded surreptitiously. Thereafter the A.R.O. passed the order, i.e. paper No.18Ga on the record. It seems that it has been passed on 1.5.1963 in which it has been clearly indicated that "हाल नं0 719.....अमर सिंह..... .....अमीन ने फर्जिया इन्द्रास दिखाये हैं जैसे कि एस.एन.टी. रिपोर्ट 6.5.1961 से जाहिर है। इन नंबरानों से उनका कब्जा खारिज कर फिलहाल मृतक के मोरिसी खुद में इन्द्रास रहे ।" It was further directed that the revenue record may be corrected accordingly. In pursuance of the said order the settlement record was corrected and that document is paper No.23Ga/2 on record. The learned trial court had erred in holding that the order of the A.R.O. had never been acted upon. The learned trial court had also erred in holding that the name of Amar Singh which had been struck off from the revenue records, the same must have been recorded in the name of Smt. Tulsa Devi. The Trial Court further erred in holding that there could be no compliance of the order and Amar Singh remained in possession as such. The finding recorded by the trial court is against the record. The report of S.N.T. in the year 1961 and thereafter the A.R.O. passed the order in the year 1963 that

the plaintiffs' father Amar Singh's name had been recorded surreptitiously and he was not actually in possession when the said entry was corrected vide paper 18Ga and the effect was given in paper No.21C/2. Thus, the name of the father of the plaintiffs had been deleted and the entry was not recorded in favour of the father of the plaintiffs.

12. It is also pertinent to mention here that in Uttaranchal after the settlement was conducted no annual register as provided under the Land Revenue Act (khasra) was being maintained by the Lekhpal till 1374 Fasli. The KUZA Act came into force in the year 1374 Fasli in the Uttaranchal State. By virtue of Section 10(e) the entries which had been recorded in the settlement are relevant. Thus, the father of the plaintiffs was not recorded in the said revenue records, as such, the rights of Asami too could not be conferred upon the plaintiffs or their father.

13. It is also pertinent to mention here that after the enforcement of the Kumaon Zamindari Abolition & Land Reforms Act, Section 10 provided for the conferment of the rights of Asami to the occupant as provided under section 10(e) of the Act. The persons who had been conferred the rights of the Asami under section 10(e) they were conferred rights of the sirdar by virtue of a notification dated 4.1.1973 and the persons who had fulfilled the conditions laid down under section 10(e) the occupant became the sirdars by operation of the Act automatically. Thereafter the Act was again amended and the persons, who had been conferred the rights of Asami under section 10 and lateron the rights of the sirdar were conferred in the year 1973, became transferable bhumidhar at the subsequent date. To acquire the sirdari rights or bhumidahri rights by virtue of the notification as referred by the plaintiffs it is obligatory on the part of the

plaintiffs to show that he had fulfilled the ingredients of section 10(e) of the Kumaon Zamindari Abolition Act. As I have already pointed out that the plaintiffs had not been recorded in the year 1374 Fasli or in any revenue records prepared prior to that under the provisions of the Land Revenue Act, as such, the plaintiffs had no right to have the bhumidhari rights over the land in dispute. It is very strange that the settlement entries had been recorded in favour of Smt. Tulsa Devi but the Lekhpal, without having the power, conferred the rights in Khatauni by virtue of an endorsement that he also had become the Sirdar. The Lekhpal had got the right to verify the possession of the occupants yearly in the annual register maintained by the revenue officials and he could record the entries in that annual register. The corrections in the Khatauni could not be carried out by the Lekhpal. It could only be corrected by the Assistant Collector, if there is any clerical error is found over the document. The Khatauni (10Ga) reveals that the Lekhpal has made the endorsement that Amar Singh had become Sirtan but his name had been recorded in the column of the bhumidhar. He had not been shown as occupant or kabazedar. It is also strange that the person who had been shown as bhumidhar in the same document had been conferred the rights of Sirdar by the Lekhpal. Thus, both the entries are inconsistent and are not reliable. It is also surprising that the khatauni pertaining to the year 1398 Fasli to 1403 Fasli, the name of Smt. Tulsa Devi had again been shown as land tenure holder. When the name of Amar Singh had been deleted in the year 1964 in the settlement record how his name came in the next khatauni, in which the Lekpal had made an entry in 1374 Fasli that Amar Singh became the sirdar. Again the name of Smt. Tulsa Devi which was corrected by the A.R.O. find place

in the said khatauni, i.e. paper No.94Ga and again the Lekhpal had recorded an entry that the name of Smt. Tulsa Devsi is being deleted from the column of the tenure holder in the year 19 91 and the name of plaintiffs had been recorded. It is clear that till 1398 Fasli the name of Smt. Tulsa Devi was available on record, then the plaintiffs could not say that their names had been continuously on record in 1374 Fasli. In view of the foregoing discussion, I am of the view that the bhumidhari rights could not be conferred upon the plaintiffs by virtue of Section 10(e) for the Z.A. Act.

14. Now it has to be seen as to who was in possession of the land since 1950. The learned trial court had dealt with the papers filed by the plaintiffs and had given a categorical finding that the plaintiffs' father was in possession over the land in dispute and he had further held that there was no evidence on record on the basis of which it can be held that Amar Singh, the father of the plaintiffs, ever dispossessed rather there was evidence that Amar Singh continued in possession on the disputed plots and he became Sirdar and thereafter became bhumidhar. The learned District Judge had referred the documents which had been field by the defendant. He had further held that there were some orders to show that some entries were made in the name of Amar Singh but which could not be effected and orders were made that the name of Amar Singh be struck off from the plot in dispute and the name of Smt. Tulsa Devi be recorded again in the revenue records. The trial court held that even if there were such orders it was for the defendant to prove that actually the said orders were complied with an possession was taken from Amar Singh and the plots were ordered to be recorded in the name of Smt. Tulsa Devi. The learned trial court further held that inspite of the orders of the revenue

authorities actual possession of the disputed plots remained with Amar Singh and he was never evicted from the said plots. I am not in agreement with the findings recorded by the learned trial court. The trial court had relied upon paper No.31Ga which was the statement of Sardar Singh, Malguzar who had given statement that Amar Singh was in possession of whole of the plots of Smt. Tulsa Devi. This statement seems to have been recorded on 14.10.1953. It is recorded before the order of the A.R.O. was passed. The learned trial court had also relied upon a paper No.32Ga, report dated 1.3.1958 by which the Lekhpa, Barahat stated that the father of the plaintiffs remained in the possession of an area of 16 Nali 13 Mutthis. The learned trial court had further relied upon paper No.12 Kha that the entries recorded in the khatauni are not forged and the entry had to be relied upon and the name of Amar Singh had given effect to. However, the trial court had ignored that the order of the A.R.O. had been complied with in the same document and entry by the red ink had been made that the name of Amar Singh be deleted in view of the order or the A.R.O. The trial court had also relied upon a paper No.23C/2 and observed that the disputed plots which were taken from Amar Singh were given in supurdgi of Malguzar. Again it was observed that it was merely an order that the disputed plots be given in supurdgi of Malguzar. However, there is no paper to prove that the actual plots were taken for the possession of Amar Singh and were given in supurdgi of Malguzar. The learned trial court had further observed that by the said paper the entry had not been corrected. Relying all the above documents as well as other documentary and oral evidence the learned trial court held that he said papers reveal that the plaintiffs' father or the plaintiffs were in possession over the land in dispute. It is

made clear at his point that the parties had field several documents and these documents can be categorized in three heads. Firstly, those documents which had been filed by the parties before the commencement of the settlement proceedings. The second category of the documents may be the documents which pertains during the operation of the settlements and the third category of documents are those which pertains after the settlement.

15. It is an admitted case that Smt. Tulsa Devi died issueless. According to the plaintiffs' version Smt. Tulsa Devi adopted Jigyashu as a son and he also died issueless and he adopted Amar Singh as his son. But this case was pleaded in the replica of the case but no evidence was adduced before the court and the document which had been referred is the statement of Malguzar which is paper No.31Ga. This document reveals that there is sweeping statement that Jigyashu adopted Amar Singh. The another document, i.e. paper No.104Ga there is some vague statement that the father for the plaintiffs were adopted by Jigyashu. However, these pleas were not pressed during the evidence before the trial court and it was not taken at the time of the arguments. The learned counsel for the appellant did not press this contention before this court. There is no iota of oral evidence which connect the aforementioned documents that the same Amar Singh who is the father for the plaintiffs was the person who was adopted. There is no other evidence on record, which was required for the valid adoption, had not been led by the plaintiffs. This point was not pressed before me also. I am of the view that the plaintiffs' father was never adopted in the family of Jigyashu or Smt. Tulsa Devi. It seems that this plea was taken only to cover the tenancy rights of Amar Singh. The plaintiffs tried to take a case that they came into

possession over the land by succession of being adopted son of Jigyashu but this plea has not been proved or pressed before this court.

16. Now the question only remains with regard to the possession. There is no iota of evidence on record how Mor Singh entered into the land and how they came into possession after 14.5.1956. To show the possession, first the statement of Malguzar Sardar Singh which was recorded on 14.10.1953. There is a document on record, paper No.23Ga/2 which was written on

14.5.1956 in which he has indicated that he has handed over the possession of the entire land of Smt. Tulsa Devi except 4 Nali. The contents for the said deed is as under:

17. '' मैं अमर सिंह धर्मपुत्र भौपाल मौजा ज्ञानसू पट्टी बाडाहाट वाला तहरीर करता हूॅ कि जो मुस्मांत तुलसा की मुपाली जमीन मेरे कब्जे कान्त में थी उस जमीन का कब्जा मैंने छोड दिया है और आज की तारीख से उस जमीन पर मैं कोई दखल नही करूगा सिर्फ जो जमीन मुताबिक हुक्म पुस्त के गोसाला मकान मय चौक सहवाग व दो खेत तालाब के मुझे दिये गये हैं उस पर मैं काबिज रहुॅगा। उनके नंबरान ये हैं खेत नं0 339 सहवाग, 240 गोसाला 244 मकान, 245, 246 सहवाग, 247 दस, 248, 249 सहवाग व खेत नं0 619 का 1 नाली 15 मुट्ठी रकवा कुल 4– नाली रकवा जो मुझे दिये गये हैं काबिज रहॅूगा।श

18. Thus, this document clearly demolishes the case of the plaintiffs that the father of the plaintiffs had never been dispossessed from the disputed land. Thus, the reliance placed by the trial court on Paper No. 31C which is a document of 14.10.1953 is irrelevant. During the operation of the settlement the Fard Kabja was prepared and Tanaza was issued. The report paper No.32Ga reveals that the Lekhpal has given a report that the father of the plaintiffs Amar Singh remained in possession of an area measuring 16 Nali 13 Mutthis. On the basis of the said reports which had been referred in the judgment of the trial court Tanaza was issued. Paper No. 20Ga is the document which is 'fard tasdiki' which

was prepared during operation of the settlement. After the fard tasdiki is prepared against the Tanazas was issued under the orders of the A.R.O. the A.R.O. vide its order dated 5.9.1960 which is paper No.29Ka had written that Amar Singh was in possession. When this order was against given the report was sought and the S.N.T. submitted that report dated 6.2.1961, paper No.23Ga, he has mentioned as follows:

19. " मोजा ज्ञानसू मध्ये मु0 खाता सं0 46 में जो मुसमात तुलसा वाली जमीन मुयाली करार दी गयी है उसके निम्नलिखित नम्बरान पर बगेर मजूरी हकदारों पे फर्जिया कब्जा हक रिकार्ड आपरेषन में दर्साया गया है यदपि ये भूमी मालगुजार के सुपुर्द बतोर धरोहर के सरकार की ओर से रखी गई अतः उक्त कब्जा खारीज किये जाने वाला आदेष करने की अर्ज की जाती है। श

20. On the basis of this report again the A.R.O. had passed the order to delete the name of Amar Singh as his name had been recorded surreptitiously over the disputed land. Thus, this document clearly reveals that the A.R.O. had found on the basis of the S.N.T. that Amar Singh was never in possession over the land and the entries which had been recorded during operation of the settlement are not based on actual possession and had been recorded surreptitiously and without any basis. Thereafter the name of Amar Singh was deleted from the record and the name of Smt. Tulsa Devi was maintained, as such the trial court was not justified in holding that the father of the plaintiffs, Amar Singh was in possession since 1953 over the land in suit.

21. The learned counsel for the respondents contended that the name of the plaintiffs had been recorded in the Khatauni in the yea 1991 and by virtue of these entries the plaintiffs had become the bhumidhar of the said land. The learned counsel for the appellant contended that the entries made in the revenue record in connection with the mutation does not confer any title. These are the entries which can only be seen fro the purposes of the revenue records. The

plaintiffs had no title over the land. The plaintiffs had no possession over the land. If the 'Amal-daramad, had been conducted surreptitiously in the year 1991 again this entry does not confer any right upon the plaintiffs. This entry had been obntained without any basis. The plaintiff had no title over the land in suit. Thus, there was no question of mutation. They were not the legal heirs of Smt. Tulsa Devi. They could not seek the mutation. As such, this entry is also fraudulent. However, the trial court had held that the entries recorded in the revenue record shall be deemed to be correct unless the entries are not corrected, the civil court can not correct the entries recorded in the revenue records. The proposition of the correctness of the entries can be looked into by the civil court and it is true that the civil court had no power to correct the revenue entries in the records. But the Civil court has got the power to see as to whether it gives any presumption under Section 114 that the entries had been maintained correctly and it reflects the correct picture or not or whether these are forged or it has been surreptitiously recorded. The presumption can only be drawn if the entries are correct and are not surreptitious. It is also well settled position of law that the entries in the revenue record should ordinarily be accepted at their face value and courts should not embark upon an appellate inquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent entries. The distinction may be fine but it is real. The distinction is that, one cannot challenge the correctness of what the entry in the revenue record states but the entry is open to the attack that it was made fraudulently or surreptitiously. The entry recorded surreptitiously and fraudulently or without any basis rob a document of all its legal effect and can not found a claim to a

possessory title. The emphasis can be made in order to show that the normal presumption of correctness attaching to the entries in the revenue record which by law constitute evidence of legal title is displaced by surreptitious, fraudulent and entries of without basis. This being the position of law the Civil Court, however, can not correct the revenue records but the civil court can decline to take the presumption under section 114(g) that the entries are correct. **(See Vishwa Vijay Bharati Vs Fakhrul Hassan and others- AIR 1976 Supreme Court 1485).** As I have already pointed out in the preceding paras that the A.R.O. vide its order in the year 1963 and S.N.T. had given a specific report at the time of the settlement operation that the name which had been recorded earlier had been recorded fraudulently and without any basis he was not in possession over the land in dispute. In view of such document available on record the presumption of the correctness of the entries made in the revenue records can not be taken into account. In view of the above discussion I am of the view that the contention raised by the learned counsel for the respondents had no bearing in this matter.

22. The plaintiffs had field a suit for permanent injunction before the civil court. It is a settled position of law that an injunction can only be granted if the plaintiffs prove a prima-facie title over the land in dispute and they also prove the possession over the land. The plaintiffs had not been able to prove the title over the land in suit and the possession over the suit property. However, the defendant had made a assertion that during the pendency of the suit the plaintiffs had taken the possession under the garb of the temporary injunction. The defendants had taken a case that the said land was received on transfer in exchange in lieu of the land which had been acquired by the government for the

construction of the PWD Inspection house and other government quarters. This assertion has been made in the written statement as well as in the oral evidence. This assertion is further fortified by the document, i.e. paper No.21Ga by which it has been indicated that the said land had been received in exchange. The defendants had a better title over the land, as such, the plaintiffs are not entitled to get the permanent injunction. It has been hand in **Yamuna Nagar Improvement Trust Vs. Khariati Lal reported in 2005(10) SCC 30,** the plaintiff-Khariati Lal filed a suit for permanent injunction against the defendant-Yamuna Nagar Improvement Trust. The defendant had contested the suit on the ground that the disputed land was acquired by the State Government issuing notifications under the Land Acquisition Act, 1894. An award was declared fro the and on 6.5.1970 and the mutation of transfer of land was also sanctioned on 9.2.1972. The plaintiff was a party to the award proceedings and he received the amount of compensation also. After hearing he parties, the trial court decreed the suit holding that the disputed land was not acquired by the award dated 6.5.1970 under the notification dated 3.6.1966. Thereafter, the appellate court was of the same view. The matter was carried in second appeal before the High Court and the High Court had dismissed the appeal observing that the disputed land was not the subject matter of the award dated 6.5.1970. Concurrent findings of fact by the courts below did not call for interference. When the matter came before the Hon'ble Supreme Court, it had been held that the courts below were not right in decreeing the suit. The Hon'ble Supreme Court had held that it was the duty of the plaintiff to prove that he had held that it was the duty of the plaintiff to prove that he was the owner of the property, the said property remained in his possession and that the defendant had no right, title or

interest therein. Since the plaintiff failed to prove his case the suit was dismissed by the Hon'ble Supreme Court.

23. In view of the foregoing discussion, I am of the opinion that the findings recorded by the court below are erroneous and against the record, as such, are liable to be set aside and the appeal is liable to be allowed.

24. The appeal is allowed and the order dated 13.8.1996 passed by the District Judge, Uttarkashi is hereby set aside. The suit of the plaintiff is dismissed. Costs easy.

(J.C.S. Rawat, J.)

28.7.2006.
Negi.